

(27,145)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 391.

J. M. THOMPSON, MASTER AND CLAIMANT OF THE
STEAMSHIP "WESTMEATH," &c., PETITIONER,

vs.

PETER LUCAS AND GUSTAV BLIXT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

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Original.

United States Circuit Court of Appeals for the Second Circuit.

PETER LUCAS and GUSTAV BLIXT, Libellants-Appellees,

VS.

THE STEAMSHIP "WESTMEATH," Her Engines, etc.; J. M. THOMPSON, Claimant-Appellant.

TRANSCRIPT OF RECORD.

Appeal from the District Court of the United States for the Eastern District of New York.

United States Circuit Court of Appeals, Second Circuit. Filed Jul. 11, 1918. William Parkin, clerk.

1

Statement.

1916.

- April 14. Order entered allowing libellant to sue without filing stipulation for costs.
- " 14. Petition filed.
- " 14. Libel filed.
- " 26. Claims of agent filed by K. W. & H.
- " 26. Stipulation for costs filed.
- " 26. Stipulation for value filed.
- June 21. Notice of motion filed.
- " 28. Motion for Interlocutory Decree granted by Chatfield, unless answer filed by July 12.
- July 15. Answer filed.
- Aug. 25. Note of issue.

1917.

- Feb. 12. Case tried before Chatfield, J.
- " 12. Deposition filed (K. W. & H.)
- " 12. Two stipulations filed by (K., W. & H.).
- " 12. Deposition filed by S. B. Axtell.
- " 12. Deposition filed by S. B. Axtell.
- " 19. Stipulation filed.
- Aug. 1. Opinion filed.
- Sept. 19. Final decree filed.
- " 19. Bill of costs filed.

1918.

- Jan. 25. Assignment of errors filed.
- " 25. Notice of appeal filed.

March 1. Stipulation and agreement that stipulation for value filed be as the bond for damages and costs on appeal filed.

2

Libel.

To the Honorable Judges of the United States District Court for the Eastern District of New York:

In Admiralty.

The libel of Peter Lucas and Gustav Blixt, firemen on board the Steamship Westmeath, against the said steamship, her engines, tackle, apparel, etc., and against Captain Thompson, the master of said vessel, in a cause of wages, civil and maritime, alleges as follows:

First. That the Steamship Westmeath (Official number 117381), is a British merchant vessel of 5,200 tons register, owned by the New Zealand Shipping Company, Lim., 138, Leadenhall Street, City, London, engaged in freight transportation between ports in the United States, Australia and other parts; that she is now lying in that part of Brooklyn known as Bush Docks, Pier No. 2, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Second. That on or about the 18th day of December, 1915, Captain Thompson, the master of the Steamship Westmeath, by himself or his agent, hired the libellant Peter Lucas, to serve as fireman, on board said vessel, for and during a voyage from Port Perry, Australia, to New York, via Wellington, New Zealand, at and after the rate of wages of Ten Pounds, sterling, per month, and a bonus of One Pound, sterling, per month, for risk incurred by your libellant owing to the state of war in Europe; that on or about the 8th day of December, 1915, the master of said vessel, by himself or his agent,

3 hired the libellant, Gustav Blixt, to serve as fireman, on board the said vessel, for and during a voyage to New York, via Sydney, Australia, and Wellington, New Zealand, at and after the rate of wages of Ten Pounds, sterling, per month, and a bonus of One Pound, sterling, per month, for risks incurred by your libellant owing to the state of war in Europe; that in pursuance of said agreement, the libellants entered into the service of the said vessel as such seamen as aforesaid, on or about the respective dates as aforesaid.

Third. That said vessel, having left Wellington, New Zealand, proceeded, with libellants on board, for the Port of New York, where she safely arrived, delivered her cargo, and did proceed to load cargo; that on the 8th day of April, 1916, the libellant Gustav Blixt did make a personal and direct demand upon Captain Thompson, the master of the Steamship Westmeath for one-half of the wages then owing to your libellant; that said demand was made by your libellant in accordance with the provisions of Section 4530 of the United States Revised Statutes, Act of March 4th, 1915; that the master of the said vessel absolutely refused this demand of the libellant; that under and by virtue of the provisions of the said section, the

libelant then became entitled to the full amount of the wages then due and owing him from the said vessel, in the sum of Thirty-seven Pounds, nine shillings, and four pence, or in United States money at the current rate of exchange (\$4.77 to the Pound sterling), would be One hundred and seventy-six (\$176.00) Dollars, and forty-

4 clothing and effects on said vessel, or for the value thereof in the sum of Sixty-five (\$65.00) Dollars; that on the 10th day of April, 1916, the libelant, Peter Lucas did make a personal and direct demand upon the master of the said vessel for one-half of the wages then owing him; that said demand was absolutely refused by the said master; that under and by virtue of the provisions of the above mentioned section, the libelant then became entitled to the full sum of the wages then due and owing the libelant in the sum of Twenty-three Pounds, fourteen shillings and eight pence, or in United States money at the current rate of exchange, the sum of One hundred and nine (\$109.71) Dollars and seventy-one cents, over and above all payments made on account; that libelant makes a further demand for his clothing and effects on said vessel, or for the value thereof in the sum of Sixty-five (\$65.00) Dollars.

Fourth. That during the whole time the libelants were on board the said vessel, they well and faithfully performed their duty as such firemen, as aforesaid, and were obedient to all lawful commands of the said master and the other officers of the vessel, whereby, and by reason of the provisions of the said section of the United States Revised Statutes, as aforesaid, they became entitled to demand from the said vessel as follows: The libelant Lucas, for his wages and monetary compensation for his clothing and effects, the sum of One hundred and seventy-four (\$174.71) Dollars and seventy-one cents; and to the libelant Blixt, the sum of Two hundred and forty-one (\$241.49) Dollars and forty-nine cents.

5 Fifth. That all and the singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libelants pray that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the Steamship Westmeath, her tackle, apparel, engines, etc., and that the said Captain Thompson, master of the said vessel, and all persons having any right, title or interest in said steamship, her tackle, apparel, engines, etc., may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the wages and monetary compensation aforesaid, in the sum of Four hundred and sixteen (\$416.20) Dollars and twenty cents, and that the said vessel may be condemned and sold to pay the same, and that the libelants may have such other and further relief in the premises, as in law and justice they may be entitled to receive.

SILAS B. AXTELL,
Proctor for Libelants.

Office and Post Office Address, 1 Broadway, Borough of Manhattan, City of New York.

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Answer.

To the Honorable the Judges of the United States District Court for the Eastern District of New York:

The answer of J. M. Thompson, claimant of the steamship Westmeath, to the libel of Peter Lucas and Gustavus Blixt, firemen, against the steamship Westmeath, in a cause of wages, civil and maritime, alleges on information and belief as follows:

First. He admits that the steamship Westmeath is a British merchant vessel owned by the New Zealand Shipping Company, Limited, of 138 Leadenhall Street, London, England; that the vessel is a tramp steamship engaged in the carriage of freight, and that at the time the libel was filed was within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Second. He admits that on or about the 19th day of December, 1915, the claimant and master of the steamship Westmeath, at Port Pirie, Australia, signed on the ship's articles the libellant Lucas as a fireman at the rate of £10 per month, and admits that on or about the 8th day of December, 1915, at Sydney, Australia, he signed on the ship's articles the libellant, Blixt, as a fireman at the rate of £10 per month. He denies all the other matters alleged in the second article of the libel.

Third. He admits that the steamship Westmeath arrived in New York where she discharged and loaded. He denies all the other matters alleged in the third article of the libel.

7 Fourth. He denies the matters alleged in the fourth article of the libel.

Fifth. He denies each and every matter alleged in the fifth article of the libel.

Sixth. Further answering the claimant alleges that the steamship Westmeath is a British steamship and the contract of service which the libellants entered into when they signed the ship's articles in December, 1915, was a British contract governed by the Laws of Great Britain and Ireland, and by entering into the service of a British ship the libellants subjected themselves to the Laws of Great Britain and Ireland and any claim which they may put forward against the said steamship is governed by the said law.

By the terms and provisions of that law, to wit: Merchants' Shipping Act of 1894, 57, 58 Vict., Chap. 60; and the Merchants' Shipping Act of 1906, 6 Edw. VII, Chap. 48, the libellants are not entitled to put forward any claim for wages and are barred by reason of their desertion from maintaining this action.

Seventh. Further answering the claimant alleges that the libellant, Lucas, an alien, signed on the ship's articles as a fireman at Port

Pirie, Australia, before the British Consul on or about December 19, 1915, and that the libelant, Blixt, a Swedish subject, signed on the ship's articles as fireman on or about December 8, 1915, before the British Consul at Sydney, Australia, for a voyage not to exceed one year, beginning on the 4th of August, 1915; and that at the times mentioned in the libel the libelants were members of the ship's crew. On or about the 9th day of April, 1916, at New York, the libelants, Lucas and Blixt, deserted the said steamship and refused to return to work on board although requested by the master to do so. Under the British Law which governs the relations of the libelants with the said steamship the libelants are deserters and have forfeited all their rights and effects.

Eighth. Further answering, the claimant alleges that all the matters set forth in the libel relate to the internal management of a British steamship and that in accordance with the Merchant's Shipping Acts and with international comity the settlement of such matters should be left to the British Consul at the port of New York, and the claimant therefore requests that this Court decline to take jurisdiction of this action.

Wherefore, the claimant prays that the libel herein may be dismissed with costs to the claimant as against the libelant and that the Court will grant to the claimant such other or further relief as the justice of the cause may require.

KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant.

9 STATE OF NEW YORK,
County of New York, ss:

William H. McGrann, being duly sworn, deposes and says:

I am a member of the firm of Kirlin, Woolsey & Hickox, proctors for the claimant herein.

The foregoing answer is true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe — to be true.

The sources of my information and the reasons for my belief as to the matters not within my own knowledge are statements made by the master, officers and crew of the steamship Westmeath.

The reason this verification is not made by the claimant is that he is not now within the United States.

WILLIAM H. McGRANN.

Sworn to before me, this 14th day of July, 1916.

CLETUS KEATING,
Notary Public, 33, New York County.

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Minutes of Trial.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT

VS.

STEAMSHIP "WESTMEATH."

February 12, 1917.

Before Thomas I. Chatfield, District Judge.

Case called for trial.

Appearances:

Silas B. Axtell for libellant.

Kirlin, Woolsey & Hickox by Mr. Potter for claimant.

Mr. Axtell addresses Court on behalf of libellant.

Depositions of Peter Lucas and Gustavus Blixt read in evidence and ordered filed.

Direct examination read by Mr. Axtell.

Cross-examination read by Mr. Potter.

Rebuttal examination read by Mr. Axtell.

Libellant rests.

Depositions of John N. Thompson read on behalf of claimant and ordered filed.

Direct examination read by Mr. Potter.

Cross-examination read by Mr. Axtell.

Redirect examination read by Mr. Potter.

Mr. Potter offers in evidence the following in connection with said deposition:

11 Notice to master, etc., marked Claimant's Ex. 1.

2 Accounts, marked Claimant's Exs. 2 and 3.

Certified copy of Articles of Agreement, marked Claimant's Ex. 4.

Mr. Potter offers and reads into record, two stipulations which are ordered filed.

Claimant rests. Libellant rests.

Testimony closed.

Mr. Axtell argues on behalf of libellant.

Mr. Potter argues on behalf of claimant.

Decisions reserved. Brief submitted on behalf of claimant.

Brief on behalf of libellant to be submitted on Feb. 13, 1917.

12 United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

S. S. "WESTMEATH," Her Engines, Boilers, Tackle, Apparel, etc.

The Testimony of Libelants, Peter Lucas and Gustav Blixt, Witnesses in Their Own Behalf, Taken de Bene Esse at the Office of Silas B. Axtell, 1 Broadway, the 17th Day of April, 1916, Before Maurice K. Wise, a Notary Public.

Appearances:

George W. Prettyman, representing Kirlin, Woolsey & Hickox, for Claimant.
Silas B. Axtell for Libelants.

It is further stipulated that the signing and certification of said testimony be waived; that a copy of the testimony be served on Messrs. Kirlin, Woolsey & Hickox, and if the matter goes to trial that the stenographer's minutes be a taxable cost.

PETER LUCAS being duly sworn deposes and says as follows:

By Mr. Axtell:

Q. What is your name?

A. Peter Lucas.

Q. Were you a member of the crew of the Westmeath?

A. Yes, sir.

13 Q. You signed articles where?

A. West Australia, Port Parry.

Q. Were the articles read to you?

A. They took me aboard Sunday night and the ship was at anchor. Of course they read me the articles, but I did not understand properly what they said.

Q. Who read them to you?

A. The captain.

Q. Anybody else present?

A. The chief engineer was there.

Q. What did the articles say?

A. The ship had 8 months' articles, from there to New York or Boston. He told me the wages were ten pounds per month, and I asked him if he pay me off in the States so he says to me, if I get another man he would pay me off, and that is all he told me there.

Q. Who took you aboard the ship?

A. The captain.

Q. Any shipping master in this case?

A. There was a runner on the ship.

Q. When you got to New York, did you ask to be paid off?

A. I asked him in Boston.

Q. Did he pay off?

A. No, he refused to pay us.

Q. What date was that?

A. About 20 days ago.

Q. That was about the 26th of March, 1916?

A. Yes, something like that.

Q. When did you get to New York?

A. We got here two weeks ago to-day.

Q. Did you ask the captain to pay you off as soon as you got to New York?

A. Yes, I asked him.

Q. What date was that?

A. As soon as we got here.

14 Q. What did he say?

A. He said he couldn't do it.

Q. Did you say anything to him about the promise he made?

A. Yes, and he says, "We will see what we can do later on," but of course he wouldn't give me a chance to speak to him.

Q. Were the articles of the ship posted in the fore-castle of the vessel?

A. No, sir.

Q. Was there a copy of the scale of provisions posted in the fore-castle of the vessel?

A. No, sir.

Q. Did you make any other demand for wages upon the captain in New York?

A. No, sir.

Q. Did you come to this office for legal advice?

A. Yes, sir.

Q. Were you advised to make a certain demand upon the captain for half wages?

A. Yes, sir.

Q. Did you make any such demand upon him?

A. Yes, sir.

Q. When?

A. A week ago now.

Q. What day of the week?

A. Last Monday.

Q. What time of the day?

A. About 9 o'clock.

Q. Who was with you?

A. This man (designating Gustav Blijxt).

Q. Tell me just what you said to the captain at this time?

A. I been asked him for \$50.00 Saturday, so he says to me, "I got no money to give you?" I don't say anything more to him, I walked down and went to work, and I was up there on Monday and asked him for half wages and he says to me, "Can't do it." Then I come up here.

Q. On what day did you come to the office of The Legal Aid Society for advice?

A. Monday.

15 Q. Was that before or after you made the demand on the captain?

A. Of course I was up here before then, and then I went down to the captain and asked him for half wages and he refused it.

Q. Then you came back to The Legal Aid Society and reported that fact?

A. Yes, sir.

Q. And I told you I would commence suit immediately?

A. Yes, sir.

Q. And then you signed the papers here?

A. Yes, sir.

Q. How much were you getting a month?

A. Ten pounds.

Q. What were you on board?

A. A fireman.

Q. What nationality are you?

A. Greek.

Q. How old are you?

A. 28 years.

Q. You speak English?

A. Yes.

Q. Do you read English?

A. No, I don't read it.

Q. Do you read Greek?

A. No.

Q. How many years did you go to school?

A. Two years.

Q. How long have you been going to sea?

A. Twelve years.

Q. You have shipped on British ships before?

A. Yes, sir.

Q. You know that the provisions of the articles provide that you be paid off in the United Kingdom?

A. Yes, sir.

Q. Are you in the habit of making oral agreements with the captains to be paid off before the term of the agreement expires?

A. I asked him to pay me off in the States.

Q. Where did you sign on?

A. I signed on in Australia.

Q. Have you ever asked that on any other ship?

A. Yes, sir, and I have been paid off in American ships.

16 Q. Where?

A. At Port Parry.

Q. How far from shore was the ship lying?

A. When I signed on it was ten miles from town.

Q. Was there any British Consul there?

A. No, just American.

Q. Wasn't this an Australian port?

A. It was a British port, so there wasn't any British Consul there.

Q. Who else was there?

A. Nobody there but the captain.

Q. Was there a British Shipping Office at Port Parry?

A. Yes, a Shipping Office there, but this was Sunday and it was closed.

Q. How much wages is there owing you?

A. Four months' wages to-morrow.

Q. How much does that amount to?

A. Ten pounds per month, 40 pounds.

Q. How much have you been paid since you joined the ship?

A. I got 11 pounds.

Q. How much advance did you get?

A. Nothing.

Q. What was the first money you drew, and where?

A. He gave me 10 shillings in Australia.

Q. What port?

A. Littleton.

Q. What was the next?

A. In the same place he gave the tailor 2 pounds for me. The next port was Wolfton, Australia, he gave me one pound. The next was Boston, \$5.00 cash and \$13.50 to the tailor. I asked him for \$20.00 but he wouldn't give me that.

Q. Did you receive anything else?

A. Yes, something in Baltimore. He wouldn't give me any cash but he gave the tailor an order.

Q. For how much?

A. \$13.50.

17 Q. How much cash did the tailor give you for the order?

A. \$10.00.

Q. Do you know whether the captain got any of that \$3.50?

A. Of course the tailor told me that the captain got ten per cent.

Mr. Prettyman: I move to strike out this answer as hearsay.

Q. Slop-chest on this vessel?

A. Yes, sir.

Q. Did you get any slops?

A. No, only tobacco.

Q. Did many of the sailors on this ship get stuff from this tailor?

A. Yes, at Boston and Baltimore.

Q. Is that your account?

A. Yes, sir.

Q. Did you keep it yourself?

A. Yes, sir.

Note: Offers account of wages identified as "Exhibit A."
(Exhibit "A" attached to Page 36.)

Q. Did you note down the advances on this paper at the time you got them, or did you mark them all at once?

A. Everything I put down as I got it.

Q. Did you have a book or keep it on this paper?

A. On this paper.

Q. Have you a fountain pen?

A. Yes, sir.

Q. Whose writing is this?

A. A fireman on the ship.

Q. Did one of the firemen keep this for you?

A. Yes, sir.

Q. But you had the paper in your possession?

A. Yes, sir, and the steward had one.

Q. And the steward kept a copy of it?

A. Yes, sir.

18 Q. And you claim a balance of 29 pounds wages?

A. Yes, sir.

Q. Are your clothes aboard the ship?

A. Yes, sir.

Q. How much are your clothes worth?

A. \$100.00.

Q. What did they consist of?

A. Two suits of clothes costing \$70.00, blankets, underwear, all my working clothes, two pairs of shoes. I guess that it all.

Q. Any shaving effects?

A. Yes, of course, razors, strops, etc.

Q. Would you take \$100.00 for it?

A. Yes, sir.

Cross-examination.

By Mr. Prettyman:

Q. Are you still working on board this ship?

A. No, sir, I go down every day, but I don't work, the doctor told me not to work for a couple of days, so I stayed in bed a few days, but the doctor didn't come back to examine me again.

Q. Have you been discharged from this ship?

A. No, I have not.

Q. Have you tried to get your discharge?

A. Yes, of course if I did.

Q. About what time did you sign on the articles in Australia, what month?

A. The 18th of December, 1915.

Q. When is your time up according to the articles which you signed?

A. He didn't tell me when the articles were up, but I asked the fellows on the ship, and they told me the articles is up to August this year.

Q. Then your time is not up yet?

A. No, sir.

Q. According to the articles which you signed in Australia the time is not up yet?

A. No, sir.

19 Q. These articles were read over to you, and you understood what you were doing?

A. They didn't tell me, they just asked me where I am living,

the wages of the ship ten pounds, that the ship is going to Wellington for orders and from there to the United States. That is all I know from the captain; that was Sunday night 12 o'clock when we signed on.

Q. You understood pretty well what you were going to do under those articles, didn't you?

A. Of course I understood, but I asked him to pay me off in the States, and he said if we get another man.

Q. He said he would pay you off if the captain got another man?

A. Yes, but he got a chance to get another man between three ports, Boston, Philadelphia and New York.

Q. It would cost him a good deal to get another man and he would have to pay the shipping agent, wouldn't he?

A. Yes, of course.

Q. So you could get your discharge if the captain got another man?

A. Yes, sir.

Q. And as he didn't get another man he couldn't do it?

A. He couldn't do it, that is what he said to me.

Q. When you made your demand upon the captain in New York didn't you say to the captain that if he would pay you one-half your wages you would be satisfied, and call the agreement off?

A. Yes, if he gave me half my wages.

Q. So that you wouldn't have to go back on the ship?

Mr. Axtell: I object to the form of question put to the witness, as witness does not understand English, and the question is so
20 formed as to put conclusions in his mouth.

A. Yes, sir.

Q. What did you say to the captain when you went down there on Monday?

A. I went up in his room, asked him for one-half wages, he didn't give me any chance to speak, just said "I can't do it." He shut his door and went back in his room.

Q. Did you at the same time ask him to let you have your discharge?

A. No, I didn't ask for my discharge?

Q. You had been up there several times asking him to discharge you?

A. No, sir.

Q. You asked in Boston, didn't you?

A. Yes, I asked the captain.

Q. Did you ever ask in New York?

A. Yes, I asked in New York, too.

Q. When was the last time you asked before Monday?

A. Thursday afternoon of the week before.

Q. For quite a while before this Monday, the 10th, you had been making demands upon the captain for your release from the ship?

A. Yes, sir.

Q. You had been willing to throw up the whole agreement for half your wages?

A. Yes, sir.

Q. On Monday when you went on the ship after you had been up to see Mr. Axtell, and you went back to the ship, weren't you willing to give up the agreement which you had made in Australia in the shipping articles, and be released for half your wages?

Mr. Axtel: I object to this question.

21 A. If I got half my wages I would have to go back on the ship.

Q. You understand you have to do that?

A. Yes.

Q. You wouldn't mind doing that at that time?

A. No, sir.

Q. You are not willing to go back now?

A. No, sir.

Q. What has happened since that time?

A. Nothing.

Q. Well you say you were willing to go back on Monday if he paid you half wages?

A. Yes, of course if I didn't have to wait the rest of the time.

Q. Wouldn't you have been willing to give up half your wages to get away from the ship?

Mr. Axtell: I object to that on the ground that it is unfair to the witness, as any seaman on a British ship is willing to give up half of his wages to get off her, if he doesn't know that he has a legal claim.

A. (No answer.)

Q. Which were you more anxious to do, to obtain your release from the vessel or get half wages?

Mr. Axtell: I object to these questions as to the intention of the witness. I object on the ground that it is incompetent, and that it is well settled in Law that the intention of parties to controversies is to be determined by their acts.

A. (No answer.)

22 Q. You were satisfied with the terms of the articles as they were read to you?

A. Of course they gave me the terms but said I would be paid off here in the States.

Q. Did he make that promise to pay you off in New York provided that he got another man, before you agreed to the articles or after you agreed to the articles?

A. Before I signed the articles.

Q. Did you sign the articles yourself?

A. Yes, sir.

Q. Did you make your mark or sign your name?

A. No, I signed my name.

Q. You are perfectly sure that on this Monday you made a demand upon the captain for half wages?

A. Yes, sir.

Q. Anything else?

A. Nothing else.

Q. You didn't ask him for all your wages?

A. Yes, I did before that.

Q. Did you ask for all of your wages in Boston?

A. Yes, sir.

Q. You say you have been on British ships before?

A. Yes.

Q. And you have gone through the signing of articles, etc., before, on British ships?

A. No, sir, I didn't sign articles, I was on English vessels around the coast, that is what they call weekly boats, they pay the men every week.

Redirect examination.

By Mr. Axtell:

Q. Was this man with you when you signed at Port Parry (designating Blixt)?

A. Oh, no, he signed before me.

Q. Who did you say was with you besides the captain when you signed on?

A. The chief engineer.

23 Q. Did the captain tell you anything about paying you off in the States before going aboard the ship?

A. Yes, he told me in Parry.

Q. How did you get out to the ship from Parry?

A. A tug boat.

Q. Any other men taken aboard at the same time?

A. Yes, sir, one fellow belonging to Australia.

Q. Is he still aboard?

A. Yes, sir.

Q. What is his name?

A. I don't know.

Q. Was he there when you signed articles?

A. No.

Q. You were not both in the room at the same time?

A. No, sir.

Q. Do you know whether the captain made any promises to him to pay off in the States?

A. I didn't hear anything.

Q. Did he go out on the tugboat with you?

A. Yes, sir.

Q. Was he with you when the captain talked to you at Port Parry?

A. No, sir.

Recross.

By Mr. Prettyman:

Q. What did the captain say to you before going out on the ship?

A. He didn't say very much. He told me it was a good ship and was going to New Zealand for orders and from there to the United States. The runner gave me the job.

Q. Was that runner on the ship, and did you ever see him afterwards?

A. No, sir.

Q. Where did he stay?

A. At Parry.

Q. How do you know he is a ship runner?

A. He said he was a ship runner.

Q. A runner for a shipping agent?

A. No, sir.

Q. What did the captain say to you?

24 A. He told me to go on board the ship and sign on, and he told me many times that the ship was going to New Zealand for orders and from there to the United States and then he took me on board the ship and signed on.

Q. He didn't make any terms to you then?

A. I asked him to pay me off in the United States and he said yes, and I asked him before I signed on and he said "Yes, when you get another man I pay you off."

Q. He didn't mean the first time he touched a port, did he?

A. No, sir, he says when he touched the United States.

Q. He might touch here again before the eight months are up?

A. Yes, but he has to give me half my wages, I got \$100.00 from the ship and I don't want to give it all to the tailors.

Mr. Prettyman: I move to strike out the answer.

Q. The captain didn't promise any definite time when you would be paid off in the United States?

A. He promised me that I would be paid off in the States but he didn't tell me so.

Q. When did you think you would be paid off?

A. In any one of these ports, New York, Boston or Baltimore, of course this is the last port.

Q. You knew when you signed the articles that the articles said that you would have to work for eight months on the ship?

A. He didn't let me know anything like that.

Q. You said that he did a little while ago?

A. Yes, I spoke to the men in the room, and they said the articles would be up in August.

Q. Weren't these articles for one year?

A. Yes, but the crew signed in England, and that was long before.

25 Q. You had eight months more to serve when you signed on?

A. They would be up in 8 months.

Q. You knew the articles you were signing were for one year?

A. No, I don't know that, he didn't tell me so.

Q. Well, didn't you think you had a year more to serve when it said one year in the articles?

A. No, I didn't sign for a year.

Q. Just what was read to you?

A. I was speaking to the runner, and he was asked by the captain to get a fireman, so the runner said to me, "You want a ship," he came up to my place where I live. I ask him what kind. He says, fireman on an English ship. I asked him was the ship going from here. He says, "Yes, ship going from here to New Zealand for orders and then to America." That is all right. Then the captain came ashore and ask the runner, "You got a man?" Runner says, "Yes, right here." Captain says, go on get your clothes and come down on the dock to-day and go aboard the ship. So, we were in the captain's room, the chief engineer was there, and the captain of the tugboat all in the captain's cabin. So he says to me, the ship is going to New Zealand and from there to America. So he asked me, "Where do you live, how old you are," that is all I know, he didn't say anything else.

Q. The captain didn't tell you anything about the voyage, how long it would be, etc.?

A. I asked him in Parry in town. He told me the ship was going to New Zealand and then to America, and I asked to be paid off and he says, "Yes, get another man and I pay you off." Of course I didn't ask him how long it would be I knew it would be over two months.

26 GUSTAV BLIXT being duly sworn deposes and says:

By Mr. Axtell:

Q. What is your name?

A. Gustav Blixt.

Q. What nationality are you?

A. Swede.

Q. Are you a citizen of the United States?

A. No, sir.

Q. Have you your first papers?

A. No, sir.

Q. How old are you?

A. 29 years.

Q. How long have you been going to sea?

A. Since I was 18.

Q. You shipped on British vessels before?

A. Yes, sir.

Q. Where did you join the Westmeath?

A. At Sydney, Australia.

Q. What rate of wages?

A. Ten pounds per month, 1 pound bonus.

Q. Did you sign in the Consul's office?

A. No Consul there. I signed in the Government shipping Office.

Q. You were regularly signed on, the articles were read to you, and the articles provided that you be paid off in the United Kingdom, didn't they?

A. They didn't say anywhere, wherever the articles were up.

Q. You understood the articles?

A. Yes, sir.

Q. What date did you sign on?

A. The 8th of December.

Q. Were you a fireman?

A. Yes, sir.

Q. And your cause of action for wages is based entirely upon the alleged demand as set forth in your liber for half wages?

A. Yes, sir.

Q. You are one of the co-libelants in this action?

A. Yes, sir.

Q. How much is there owing you from the ship?

A. About 37 pounds English money.

27 Q. Did you draw any advances?

A. No, sir.

Q. Will you state the amounts of money you received, or have you an account of it?

A. I cannot say exactly what I got, but the steward has got an account aboard.

Q. Tell me what you remember having received?

A. In Walington, New Zealand, 10 shillings; in Littleton, 1 pound; in Boston, \$5.00; in New York, \$5.00, and two pounds 15 shillings in slops.

Q. Did you get any stuff from the tailor?

A. Yes, \$10.00 from the tailor in Boston.

Q. How much did you sign for to get \$10.00?

A. I got \$5.00 cash, and clothes \$5.00.

Q. How much did the captain pay the tailor?

A. I cannot say, but the tailor told us the captain got ten per cent on the tailor.

Q. What was the name of the tailor?

A. I can't tell you but his card is on the boat.

Q. Did you get any other money from any other tailor?

A. No, only in Baltimore, \$5.00 we got from the tailor.

Q. How much did the captain charge you?

A. He didn't charge me anything, but he got a per cent on the tailor.

Q. That is all you got in Baltimore?

A. Yes, \$5.00 in cash from the tailor.

Q. Is that the card of the tailor in Boston? (Producing card marked Exhibit "A" for identification).

A. Yes.

Mr. Prettyman: I object as it is immaterial and irrelevant.

Q. The name which appears on this card is "Henry Cohen, boots, shoes, and rubbers, Boston, Mass." Is that the tailor?

A. Yes, that's right.

28 Q. Did you see this man on the ship?

A. Yes, sir.

Q. And you saw him at his place of business, too?

A. Yes, sir.

Q. Did you have any conversation with the captain about it?

A. No, sir.

Q. Is that all the money that you received?

A. Yes, sir.

Q. Are you positive you didn't receive any more?

A. Yes, sir.

Q. You didn't receive any slops?

A. Yes, the \$2.15 which I mentioned, and \$5.00 is the last I got in New York.

Q. When did you get that?

A. The 8th of April.

Q. Have you made a demand on the master for half wages?

A. Yes, sir. I was up Monday morning and I asked for half my wages and I said "Captain I want half my wages what I got coming."

Q. What did the captain say?

A. He said "No;" a straight No, and refused altogether.

Q. Then, what did you say?

A. Then I said, "Will you pay me off?" He say, "Yes, I will pay you off if you are willing to pay the expenses for another man," so I said "Yes" and so he said, "It will cost you \$25.90." All right I said I will get a man, and he said, "No, I'll get a man." So I said, "That'll be too much, I can't afford so much," then I said, "will you allow me to see the British Consul," he said, "You can go and see anybody you like." Then I went ashore, came up here and gave you the case here.

29 Q. Had you been to this office before you made a demand on the captain for half wages?

A. No, I knew there was a new law coming out.

Q. How did you know there was a new law?

A. I got the information from the Union delegate.

Q. Was anybody with you when you made this demand on the captain?

A. He was (indicating Lucas).

Q. You were both together at the same time when you made the demand on the master?

A. Yes, sir.

Q. And you overheard the conversation between Lucas and the captain, did you?

A. Yes, sir.

Q. And you claim the amount of your wages owing under Section 4530 United States Revised Statutes due to refusal of the master to pay you half wages on Monday April 10th?

A. Yes.

Q. When did the Union Delegate tell you about this Law?

A. Saturday while I was ashore.

Q. What was his name?

A. I don't know.

Q. Where did you see him?

A. On South Street.

Q. Was anybody else there besides you, the captain and Lucas when you made the demand on the master?

A. No, sir.

Cross-examination.

By Mr. Prettyman:

Q. When did the vessel arrive in New York, about what time?

A. Two weeks ago yesterday.

Q. You said that on the 10th, that was Monday, you went up to see the captain and asked him for half your wages, what time of the day was that?

A. 9 A. M., right after breakfast.

30 Q. Was that the proper time to ask?

A. Yes, that is the only time you can see him, he goes ashore after that.

Q. Just what did you say to him?

A. I demanded half my wages, and he says "No hope in the world," that is exactly what he said to me, Then I said "Will you pay me off if I get another man in my place?" He said "I will pay you off if you are willing to pay the expense." He says, "Mind you, it will cost you \$25.00." He wanted me to sign for cash and I said "All right."

Q. Did you sign for cash?

A. No, sir, I asked for permission to go ashore and see the British Consul and he said I could go and see whoever I wanted.

Q. You still had in mind that you could be paid off?

A. Yes, sir.

Q. You were satisfied then?

A. Yes.

Q. And you made your demand on the captain for half your wages and the captain said he wouldn't do it, and you said to him that you would be satisfied if he could pay you off?

A. Yes, I was satisfied.

Q. And you were willing to pay the expense for another man, you were anxious to get either?

A. Yes.

Q. So that is the way the matter stood when you went ashore?

A. Yes, sir.

Q. You weren't expecting half your wages, but you were expecting to arrange some deal with the captain so that you could be paid off and get another man in his place if it wouldn't cost too much?

A. Yes, sir.

31 Q. You would be willing to do it for \$6.00 or \$8.00?

A. Yes, \$10.00 or \$15.00 even.

Q. But you thought \$25.00 was too much?

A. Yes, half month's wages.

Q. What were you going to do at the British Consul's Office?

A. I was going to see the Consul to find out if I couldn't get a little more, so as to be paid off altogether, but the captain said, "You won't see the Consul before I see him."

Q. What did you actually do?

A. I went ashore and I went up to The Legal Aid Society.

Q. You didn't go to the British Consul's Office?

A. No, sir.

Q. And you haven't been there since, have you?

A. No, sir.

Q. Are you still on the ship now?

A. I have been aboard every day but sleeping ashore.

Q. You are still a member of the crew?

A. Yes, sir.

Q. Do you work every day?

A. No, I don't work.

Q. What is your position on the ship?

A. Fireman.

Q. They don't need you now?

A. No, they signed on two other men last Saturday in our places.

Q. After you came up to see Mr. Axtell, The Legal Aid Society, you stopped your negotiations with the captain for paying you off?

A. Yes, sir.

Q. And you gave up that idea altogether?

A. Yes, I put my case in here and I got a paper from here to give to the captain and we couldn't find the captain on Monday, the 10th, so I gave it to the captain on Tuesday, the 11th.

32 Q. What did the paper say?

A. It gave the captain warning to pay us off but he refused

us.

Q. You mean it was a notice that if he didn't pay half your wages you would demand your discharge and libel the ship?

A. It was some law, and I gave it to the skipper so that I could claim half my wages.

Q. Did you get any advance note after signing?

A. No, I signed on Friday and went aboard the same afternoon.

Q. Was the ship sailing soon after that?

A. She sailed at 6 o'clock Saturday morning.

Q. When did you sign on?

A. The 8th of December and left the 9th of December.

Redirect examination.

By Mr. Axtell:

Q. You never furnished the captain with a substitute?

A. Yes, I did.

Q. When?

A. On Tuesday.

Q. What did the captain do about it?

A. He took him. Just after 9 o'clock he came out of his cabin.

Q. Did the substitute stay on the ship?

A. Yes.

Q. All that day?

A. Oh, excuse me, you are talking about a different thing altogether. No, I never got another man, the captain was going to get a man in my place.

Q. Did you get a man for him?

A. No, sir.

Q. You proposed to get a substitute, but as you said before, he said "I'll get a substitute" and he wanted to charge you \$25.00, isn't that right?

A. Yes, that's right.

Q. You didn't do anything more about it?

A. No, sir.

33 Q. Have you made a demand upon him since that time for half your wages?

A. No, sir, because I put the case in here the same day.

Q. You are standing on your rights to recover your wages in accordance with your demands for half wages, that is all, isn't it?

A. Yes, that's all.

Recross-examination.

By Mr. Prettyman:

Q. Was a substitute obtained in your place?

A. He got three men the other night, but neither spoke to me afterward so I don't know whether they are in my place or not.

Q. Were you charged up for getting any of these three men?

A. He said to me when I went ashore on Monday after I got permission to go to the Consul, he said, "Mind you, I want to see the Consul before you," and then I said, "It doesn't matter to me whether I see the Consul now or after you." Then he said, "If you go ashore I'll put another man in your place and charge you \$2.50 per day," and I said, "How is that when you give me permission to go ashore and see the Consul." That is all, then I went ashore.

Q. Has anything been charged up to you on account of this?

A. No, I have been on board the ship every day, but I haven't been doing any work.

Q. Are your clothes aboard the ship?

A. Yes, sir.

Q. How much are they worth?

A. Between \$50.00 and \$60.00.

Q. What have you got there?

A. Three pair shoes, working gear, a lot of underwear, and a lot of small things.

34 Q. Any suits of clothes?

A. No, sir.

Q. Do you think they are reasonably worth \$50.00 or \$60.00?

A. Yes, sir.

Q. Would it cost that much to replace it?

A. Yes, sir.

Q. Is it packed up?

A. Yes.

Q. In a bag?

A. Yes, sir.

Q. Have you got your name on it?

A. Yes.

Redirect examination

By Mr. Axtel of Libellant Gustav Blixt in behalf of Libellant Peter Lucas:

Q. Were you on board the ship when Lucas made the demand for half wages?

A. Yes.

Q. What did you hear him say?

A. I heard him say, "You promised to pay me off here in the States." Then he said to him the same as to me, "If you are willing to pay the expense \$25.00, I will get a man in your place." There was another man there at the time.

Q. What was his name?

A. I don't know his name.

Q. What did Lucas say to that?

A. He said, "I thought you were going to pay me off here."

Q. Did you hear him say anything about half wages as he testified he did?

A. Yes, he wanted \$50.00.

Q. What else did you hear him say?

A. I heard him ask for half wages.

Q. What did the captain say to his demand for half wages?

A. He says "No."

Q. Anybody else present?

A. Except a sailor.

Q. Was this the same time that you made your demand?

A. Yes, sir.

Q. What time was that?

A. Just after 9 o'clock.

35

Q. Did this man come ashore with you?

A. Yes.

Recross-examination by Mr. Prettyman of Gustav Blixt in behalf of Libellant Peter Lucas:

Q. What demand did Lucas make first on the captain?

A. When I was up with him he demanded his money \$50.00.

Q. Give me his words as nearly as you can recall them?

A. He asked the captain for \$50.00, and the captain said "No" and left.

Q. Did he ask him to pay him off?

A. I was there too and the captain didn't ask him, and the captain said "What do you want" and I said "I want half my wages."

Q. After you made your demand on the captain what did you do?

A. I just asked for half my wages.

Q. What did the captain say?

A. He said he wouldn't do it.

Q. Did you ask him to pay you off?

A. Yes, sir.

Q. And he said he would if you paid the price of a substitute that he picked out?

A. Yes, sir.

Q. Then what did Lucas do?

A. He was willing to do the same as me.

Q. Did he turn to Lucas and say the same as to you?

A. He spoke to both of us at the same time.

Q. And he said he would pay you both off?

A. Yes, and he said "Mind you it will cost you \$25.00 expense."

Q. And the two of you went ashore?

A. Yes, sir.

36 Q. And as the matter stood then, you were still dickering with the captain about getting paid off?

A. Yes, sir, I wanted to see if I could get paid off anyway.

Q. You wanted to get paid off, but not pay so much money?

A. Yes, sir.

Q. Did you come to The Legal Aid Society with Lucas?

A. Yes, sir.

Q. You don't know whether or not the captain went to the *Counsel* or not?

A. No, we were together all day. We got a paper from the clerk in this office to take over to the captain and we went aboard on Monday afternoon at 2 o'clock, and we couldn't find the captain in the afternoon, so we went on board that night and gave it to the captain Tuesday morning.

Q. Was that a Notice of Libel you are referring to?

A. Yes, I guess so.

Q. And you say the captain failed to pay you?

A. Yes, sir.

Q. Did Lucas stay aboard the ship while you were in port?

A. He left the same day, Tuesday, he went ashore.

Q. He has been on board every day since?

A. Yes, we stop in the same house when on shore, and go on the ship every day.

Q. Do you know whether the captain obtained a substitute for Lucas?

A. I don't know.

Q. What nationality was this sailor who was with you when you made a demand on the captain for half wages?

A. He was a Dane.

Q. Did you hear him say anything at that time?

A. Yes.

Q. What did he say?

A. He asked him at the same time.

Q. What did he say?

A. He said the same thing as me. He wanted half—half his wages that was coming to him.

Q. He also said he wanted \$50, didn't he?

Mr. Potter: I object to the question as leading.

A. Yes.

Q. You had been the day before or that day (which was it) at the office of the Legal Aid Society for advice?

A. It was on the Saturday.

41 Q. And what were you advised to do?

A. To get half of our wages that was coming.

Q. Were you told anything about the new Seamen's Act?

A. Yes, certainly.

Q. What were you told?

Mr. Potter: Objected to.

A. He said that since the 1st of March a seaman could make a demand for half of his wages. And another told me—another man told me—the Union Delegate told me—the same thing.

Cross-examination.

By Mr. Potter:

Q. When did this Union Delegate tell you this?

A. On the Sunday—Saturday afternoon, when I was over on Saturday.

Q. When did you first ask the Captain to discharge you?

A. That was on the 10th of April.

Q. Didn't you ask for your discharge?

A. I asked him first for my money, and he would not give it. I said, "What about pay off?" That was what I said. And he said, "Yes, if you are willing to pay the expenses." And also he said, "It will cost you \$25, and you will have to sign for cash."

Q. And this was on the 10th?

A. The 10th of April.

Q. You asked for a discharge at that time?

A. Yes. Because I wanted to use the money. So I said, "Well, what about it? Pay me off." And his answer was "If you are willing to pay the expenses."

Q. What did you answer to that?

A. And I say, "All right;" and I asked him, "Will you allow me to see the British Consul?"

42 And he said, "You can go and see anyone you like." And when I went on shore he was going to stop me.—Captain, do you remember about this?

The Captain: Quite well.

Q. Before the 10th—between the 10th and the 3rd of April—had you asked the captain for your discharge?

A. No. I asked him Saturday for \$25, and I was refused, and I only got \$5.

Q. You wanted a discharge, didn't you, from the ship?

A. Yes, I wanted a discharge.

PETER LUCAS, called on behalf of libelants, being duly sworn, testifies:

Direct examination.

By Mr. Axtell:

Q. Lucas, do you remember the morning of April 10th, Monday morning?

A. Yes.

Q. This is the Captain here of the ship, is it? Do you know him? (Indicating Captain Thompson.)

A. Yes.

Q. Did you see him at that time?

A. Yes.

Q. Did you have any conversation with him about paying you off or paying your wages or anything?

A. Yes.

Q. What did you say to the captain, and what did he say to you?

A. I asked the captain for \$50. to send over home. He says to me, "No." The next time when I was up there again was Monday, the 10th of April. I asked him for half my wages. He said no. That was what happened at the time.

Q. Was there anybody present besides yourself?

A. Yes. Blixt was there.

Q. Anybody else besides Blixt and you?

A. One of the quartermasters was standing there on the
43. bridge.

Q. What was his name?

A. I don't know his name.

Q. How close to you was he?

A. Just as from here to the window. (Indicating.)

Q. Did you hear any of the men on the Westmeath talking about getting half their wages before you came to the Legal Aid Society's office?

Mr. Potter: Objected to.

A. Yes, I heard about it on the ship.

Q. Before or after you made this demand?

A. Before.

Q. Is that the reason you came to the Legal Aid Society?

A. Yes.

Q. When you were signed on, you heard the testimony of the

Captain this morning to the effect that he made you no promise that he would pay you off in the States? Did you hear that?

A. Yes. The captain promised me before I signed on ashore in Port Pirie. I asked him, "where was the ship going?" He said, "The ship is going to Wellington, and from there going to the States." I asked him if he would pay me off in any part of the States. And he said, "Yes; when you get another man I will pay you off."

Q. Didn't you tell me the other day that you took a man aboard the ship who was willing to sign on in your place?

A. Yes. There was two fellows went aboard to sign in my place. The chief engineer told me he was going to take a man in my place at \$2.50 a day.

Cross-examination.

44

By Mr. Potter:

Q. Lucas, when you were shipped on in Australia you wanted to come to the United States, didn't you?

A. Yes.

Q. When you arrived in New York did you make demand for discharge of the master?

A. Yes.

Q. You wanted to stay here in New York?

A. Yes.

Q. You say you went on the ship on the 10th and asked the captain for your wages?

A. Yes.

Q. Did you ask for your discharge then?

A. No. I just asked him for half my wages.

Q. Why did you do that? Did you want the money?

A. Yes. At that time I never asked him for my discharge.

Q. Why didn't you ask for half your money before that?

A. Of course, I asked him for \$50. That is about half of what is coming to me. That was the 8th day of April. He said no. I was up there Monday—that was the 10th—and I asked him for half my wages, and he said no.

Q. Which did you want the most, your half wages or your discharge?

A. Of course now I want to get my discharge and be paid off.

Q. What were the words you said to the Captain on the 10th.

A. I asked him for half my wages.

Q. Did you say anything else?

A. Nothing else. He said no. The captain was standing in the door of his room, so I asked him for half of my wages. He said no. He shut the door, and I could say nothing else; I have got to walk down.

Q. Did Blixt also ask for his wages?

45

A. Yes.

Q. Which one asked first?

A. I asked the captain first.

Q. You asked the captain first?

A. Yes.

Q. Then the door was shut when this was asked, was it not?

A. No; open; the captain opened the door.

Q. He opened the door again?

A. Yes. I was standing on the bridge alongside.

Q. How long were you on the bridge?

A. Just about 5 minutes' time.

Q. Why did you go to the Legal Aid Society?

A. When I was going up?

Q. Why?

Mr. Axtell: What reason?

A. I was asking for advice for the half of my wages. So he gave me a letter to take down to the Captain.

Q. You saw him before you got the letter, didn't you? You got the letter the second time you went to the Legal Aid Society, didn't you?

A. No, that was the first time I was up there.

Q. Didn't you go to the Legal Aid Society to get your discharge.

A. That was Monday, the 10th.

Q. But when you went to the Legal Aid Society didn't you want them to help you to get your discharge?

A. Of course.

Mr. Axtell: He testified he wanted advice.

Witness: I wanted advice.

Q. You wanted to get away from the ship?

A. Yes.

Redirect:

46 Q. You were told if you made a demand on the master for half wages he would in all probability refuse it?

A. Yes.

Q. And then in that event you would be entitled to the whole sum, no matter what promise he had made to pay you off in New York? Isn't that right.

Mr. Potter: Objected to.

A. Yes.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,

Against

THE STEAMSHIP "WESTMEATH."

Deposition of John N. Thompson, Taken on Behalf of Claimant Before Edward H. Carpenter, Notary Public, at the Office of Messrs. Kirlin, Woolsey & Hickox, No. 27 William Street, New York, April 21st, 1916.

NEW YORK, April 21, 1916—

11:30 o'clock A. M.

Present:

Messrs. Kirlin, Woolsey & Hickox (Mr. Potter), for Claimant.
Silas B. Axtell, Esq., for Libelants.

47 It is stipulated that the testimony may be taken by a stenographer, his fees to be taxable; signing, certification and filing waived; a copy of the deposition to be served on proctor for libelants.

JOHN N. THOMPSON, called on behalf of claimant, being duly sworn, testifies:

Direct examination.

By Mr. Potter:

Q. What is your present position?

A. Master of the steamship Westmeath.

Q. How long have you been master of that steamship?

A. Since September, 1915.

Q. Where did you join the ship?

A. Liverpool.

Q. At the beginning of the present voyage?

A. At the beginning of the present voyage.

Q. How long have you been a ship master?

A. About 5½ years.

Q. What certificates do you hold?

A. Master mariner's.

Q. On the present voyage you left Liverpool when?

A. September 9th.

Q. And where did you proceed to?

A. Do you mean the first port of call or our destination? Our destination was Adelaide via Durban. I stopped at Las Palmas. The voyage consisted of from Liverpool to Las Palmas, Las Palmas to Durban, and from Durban to Adelaide, and so on.

Q. Did you ship on a sailor named Lucas in Australia?

A. Yes.

Q. Where did you ship him?

A. At Port Pirie. I engaged him at Port Pirie.

48 Q. What date was this?

A. I want the Articles now. (Witness looks at Articles.)
Lucas—he signed on the 19th of December.

Q. How did he sign on?

A. He signed on at sea or practically at sea; outside the harbor; I signed him.

Q. Do you remember what day of the week that was?

A. Sunday.

Q. What was the occasion for signing on Lucas at that port?

A. The ship left the wharf at daylight on the Sunday morning; and Saturday night, as the ship was leaving on Sunday morning, two men were ashore—two firemen. The rest of the ship's company refused to take the ship to sea. I had to get the ship down the river somehow if it was at all possible; and the engineers fired the ship to sea, or fired the ship out in the river to an anchorage; and then I had to come back in a tugboat and do what I could to get other men.

Q. Did you sail the next day?

A. I sailed that night.

Q. You sailed that night?

A. I got some shipping man or somebody, who found a man named Lucas. Lucas wanted to ship. I asked him if he wanted at £10 per month. That was the wages at that time.

Q. What Articles did he sign?

A. He signed the ordinary ship Articles, as you call them, or sea to go, and he wanted to go; so I took him out on board the ship Articles—British Articles.

Q. The Articles were opened when?

A. The Articles were opened on the 4th of August, 1915.

Q. At Liverpool?

A. Half a moment! I was not there. (Witness looks at Articles.) I think they were opened at Aden.

49 Q. How long were these Articles for?

A. For 1 year—12 months.

Q. And for what voyage?

A. For a voyage of not exceeding one year's duration to any ports or places within the limits between 75 N. and 60 S. Latitude; commencing at Liverpool, thence to Australia, New Zealand, and/or United Kingdom ports and/or any ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom or Continent of Europe within home trade limits, as may be required by the master.

Q. Did you sign on another fireman in Australia by the name of Blixt?

A. Yes.

Q. Where did you sign him on?

A. Sydney I think he signed on; yes, Sydney.

Q. On what date did he sign?

A. He signed on the 8th of December.

Q. Did he sign these same Articles?

A. He signed the same Articles before the shipping master.

Q. He signed on before a shipping master?

A. Yes.

Q. On shore?

A. On shore—before the marine officer there.

Q. What wages did he sign on for?

A. He signed for £10 a month.

Q. The same as Lucas?

A. The same as Lucas.

Q. From Australia where did you proceed to?

A. New Zealand.

Q. And from there?

A. America via Montevideo.

Q. What ports did you first touch in the United States?

A. Boston, Baltimore and New York were the ports I touched at.

50 Q. Were you at the ports of Boston and Baltimore for some days?

A. Yes.

Q. Did either of these men, Lucas or Blixt, ask for their discharge or for their wages, or any part of their wages, at these two ports?

A. They asked to be discharged at these two ports.

Q. At both ports?

A. At both ports.

Q. On any particular ground?

A. No. They asked for their discharge.

Q. On condition that they should be paid off in full?

A. Yes. They wanted their discharge at Boston and Baltimore.

Q. Did they make that request repeatedly?

A. At Boston and Baltimore I remember Blixt approachnig me on one or two occasions.

Q. Asking for his discharge?

A. Yes. The man Lucas at Baltimore, he got into trouble.

Q. What was that?

A. He was out of the ship some day; he was brought up I heard as a witness on some offense; and the ship was stopped a little time whilst I interviewed the court officials and got him out. I don't know what you call it in America.

Q. As a witness?

A. As a witness.

Q. It had nothing to do with your ship?

A. No, nothing whatever; it was his own private interest.

Q. You say at neither of these two ports these men demanded their wages?

A. None, absolutely.

Q. When did you arrive at New York?

A. On the 3rd of April.

Q. Did these men, Lucas and Blixt, or either of them, demand their discharge at New York?

A. They asked for their discharge on their arrival at New York.

51 Q. Shortly after their arrival?

A. Yes.

Q. And why did they ask for their discharge?

A. They didn't give any specific reason why they asked for a discharge; they simply asked for their discharge; asked to be paid off.

Q. Both of them?

A. Yes, both of them. Not together.

Q. At various times?

A. At various times, yes.

Q. What answer did you give these men when they made their request to be paid off?

A. I told them I would not pay them off.

Q. You flatly refused on all occasions to pay them off?

A. Yes.

Q. At Boston and Baltimore?

A. Yes.

Q. And when they made these requests at New York?

A. I again refused them.

Q. How long did these men stay with the ship at New York?

A. They left the ship on the 10th of April.

Q. Did they make any demand for half or any part of their wages?

A. No.

Q. In New York, prior to that date?

A. No. There was no demand made before. The only question that arose in the matter—they wanted their discharge; and I said that I could not give them their discharge; that it would cost me \$20, or even \$25, before the ship went to pay them off. If I paid them off to get substitutes they would have to pay that. They agreed to do so. But I could not accept their agreement until I inquired more carefully into it to see if I was doing right in accepting their proposition.

Q. What did they say?

A. They said could they see the consul. I said they could, and they went and saw the consul.

52 Q. What day was that?

A. That was the 10th.

Q. Have they returned to work for the ship since that day?

A. No. They have not worked since that date. The next day they served this Libel on me. That is all I have seen of them or heard of them.

Q. You say "this libel." Did Blixt come to see you on the 10th of April?

A. He saw me on the 10th of April, yes.

Q. Where did he see you?

A. At my cabin door.

Q. What did he say at that time?

A. He wanted to be paid off; wanted his discharge. I told him it would be \$25. that it would probably cost me—\$25, to get other men. If I could charge them with the \$25 I would pay them off.

Q. Did he say this on the 10th?

A. I said this on the 10th; and I said I was inquiring about it; that when I inquired about the matter and if I could do that, then I would pay them off if they agreed to pay \$25.

Q. Did he serve some paper on you at that time?

A. No paper at all.

Q. Did he leave any paper with you?

A. No, none.

Q. Did he return the following day?

A. The following morning, about 9 o'clock.

Q. What happened at that time?

A. He just put a blue paper on my desk, and said, "There you are, Captain."

Q. (Paper shown witness.) Is this a copy of the paper?

A. Yes, that is a copy of the paper.

Said paper offered in evidence and marked Claimant's Exhibit 1, April 21, 1916.

53 Q. When he left that paper in your cabin what did he say to you at that time?

A. He just put it on my desk and said, "There you are, Captain."

Q. Did he make any demand at that time?

A. No demand, whatever. That was all. He opened my door, as a matter of fact, when I was dressing, and put it over—just passed it into the door on the desk.

Q. Did you have any conversation with either Lucas or Blixt after that?

A. Not a word.

Q. Blixt was not with Lucas at the time when he left the paper, was he?

A. No.

Q. Have the men returned to the ship since that time?

A. They have returned, I understand, but they have not worked.

Q. They have not returned for duty?

A. No. They came and wanted their clothes, and the chief officer would not give them a pass for their clothes. I can't swear if their clothes are in the ship now or not; they were in the other day.

Q. Are you positive, Captain, that at no time, at New York, or the other ports, Baltimore and Boston, these men demanded of you half their wages due at that time?

A. I am quite positive they have not. There has been no demand made on me for wages whatsoever. They have asked for their discharge; but absolutely no demand was made for wages or half their wages.

Q. Did you advance either of these men any money since you were in New York?

A. Yes; they had \$5 on Saturday night following arrival.

54 Q. What was that given them for?

A. That is the usual Saturday night spending money that I serve up to them.

Q. Was that given to all the members of the crew?

A. All members of the crew.

Q. Whether they asked for it or not?

A. Yes. That is a certain open pay day for everybody that wants to get it over Saturday night.

Q. Have you made a memorandum of wages due these men at the present time?

A. Yes.

Q. (Papers shown witness.) Will you look at these slips and say whether those are the memorandums?

A. Yes, those are the memorandums.

Said papers are offered in evidence and marked, memorandum as to Lucas, Claimant's Exhibit 2, and memorandum as to Blixt, Claimant's Exhibit 3, April 21, 1916.

Q. Did Lucas, or Blixt, or both of them, ask for their discharge after the 10th of April?

A. No. I have never seen them since the 10th of April—at least not to speak to them.

Q. At the various times before that date they had asked you for their discharge, had they?

A. Yes.

Q. Did they ask to be paid off and given their discharge?

A. That is it, yes; they asked for their discharge, which is quite understood that when they get their discharge they get their money.

Q. Are you willing now, and have you been willing at any time since you have been in New York, to pay these men half their wages due them?

55 A. I would have paid them half their wages if they had made the specific demand for half their wages; if they had made the demand for half their wages they would have got them.

Q. But they have never made the demand?

A. They have never made demand.

The Articles are marked Claimant's Exhibit 4 for Ident., April 21, 1916.

Cross examination.

By Mr. Axtell:

Q. Do you remember the occasion when you signed Lucas on?

A. Yes.

Q. What time of day was it?

A. About 10 o'clock at night.

Mr. Axtell: Put on the record that the Captain consults the seamen in order to ascertain the facts.

Q. You were down the stream, weren't you?

A. I was in the stream.

Q. You were in a hurry to get off?

A. I was in a hurry to get away.

Q. You had to take your boat out in order to catch the tide without a full crew?

A. Yes.

Q. And then you went ashore?

A. Yes.

Q. To get a man?

A. Two men.

Q. Did you get two men?

A. Yes.

Q. And Lucas was one of them?

A. Yes.

Q. Where is the other one?

A. On board the ship.

Q. What was his name?

A. H. H. L. Lock.

Q. An Englishman?

A. Australian.

Q. Were these men both signed on at the same time?

A. The same time.

Q. Did you make any promise to Lucas that you would pay him off in the states?

A. I did not.

56 Q. No promise at all?

A. No promise at all.

Q. He stated under oath in his testimony the other day (and he is here now, and I have no doubt will so again state under oath), that you did so promise him.

A. I did not.

Q. It is not so?

A. It is not so.

Q. It is true that Lucas demanded his discharge from you just as soon as he got in the States, didn't he?

A. He asked for discharge. Not demanded a discharge. There is a difference between demanding discharge and asking, is there not?

Q. He made a demand upon you to pay him off.

A. He asked his discharge. He signed on the Articles to be paid off by mutual consent. I have got to consent, and he has got to consent. He asked if I consent. I say no.

Q. That is an answer. You have answered the question.

A. All right.

Q. Didn't he tell you at the time of making his request to be paid off that you had promised to pay him off here.

A. No.

The two libelants appear before the Notary, and Mr. Axtell indicates one of them.

Q. This is Lucas, isn't it?

A. Yes.

Q. He didn't remind you of that promise to pay him off in the States when he made his demand in Baltimore and in Boston? Now, looking him in the eye, say so.

A. I am not going to dodge the matter; I am not going to be so criticised.

Q. Come out frank?

A. I am straight.

Mr. Axtell: When I see the captain looking down at the floor——

57 Mr. Potter: Objected to. You have no right to make that remark.

Witness: I believe he has not the right.

Mr. Potter: I object to counsel doing otherwise than asking his questions of the witness.

Witness: I can't remember Lucas asking me; I don't think he did; and I can conscientiously say he didn't ask me.

Q. Do you deny it under oath?

A. Yes, I deny it under oath.

Q. When did you first receive the demand for half wages in New York?

A. I have not received any demand for half wages in New York.

Q. (Claimant's Exhibit 1 shown witness.) When did you first receive this?

A. If it is dated on the 10th I received it on the 11th.

Q. Don't you remember the date?

A. The day following this. I think it was the 11th, I tell you.

Q. What day of the week was it?

A. I would not commit myself by saying what day of the week it was. I don't remember particularly. I received it, I presume, the day after, as I say. There is no date on that. If there was a date on that it would guide me.

Q. Was it this same week or last week?

A. It was last week.

Q. It was 10 days or more ago, was it?

A. It was a week or more ago, I should say, to be more correct and try to save myself.

Q. Was it on Tuesday?

A. I should suppose it was on Tuesday.

Q. About what time in the morning?

A. About 9 o'clock.

58 Q. Had any demands been made upon you for wages the day before?

A. No, not a demand for wages; a demand to be paid off, certainly.

Q. Did Lucas and Blixt come to you again the day before and ask to be paid off?

A. They did.

Q. As you have already testified?

A. As I have testified.

Q. They didn't say anything about half wages?

A. No.

Q. Don't you recall their coming to your cabin early Monday morning and asking you for half their wages?

A. No, I do not. They did not ask for half wages. They asked to be paid off.

Q. If a seaman had come to you and asked for half wages that morning what would you have said to him?

A. I should have probably got advice as to what to do, and told

him in the meantime, as I told these men, that I would see the Consul and see what the Consul would adopt.

Q. You went to the Consul's office after these men had served this paper on you, didn't you?

A. I did.

Q. And what did he tell you about the new seaman's law?

A. He told me that if these men demanded half their wages I was to give it to them; and I was prepared to do so.

Q. After he had told you?

A. Before he told me, before he told me I knew all about that.

Q. You knew all about the law before that?

A. Yes, I knew quite enough about the law to know that if they had made that demand they would have got their money.

59 Q. What did you know about the law?

A. Just that—the matter under discussion.

Q. What is the law?

— The law is that they must make a demand for their money five days after the ship arrives—for half their money due them five days after the ship arrives—and I have to give it to them.

Q. Who told you it was five days after the ship arrives.

A. Mr. Dean.

Q. When did he tell you that?

A. Before the 10th.

Q. Quite certain about that?

A. Quite certain that.

Q. When did your boat arrive?

A. On the 3rd.

Q. No other demands for half wages have been made upon you, have they?

A. None whatever.

Q. Did Fus or J. Smith, quartermaster, ask you for half wages?

A. No.

Q. Have you got such a man on board, a quartermaster named Smith, or a seaman?

A. I was just going to say you have rather got me out—I don't remember the man Smith; I can't remember 75 men; but I know of nobody else that asked me, and that was why I was safe in saying so. I don't see the name Smith in the deck department.

Q. Is there a man named William A. Baldwin on the ship?

A. Yes, here is Baldwin. He is a fireman.

Q. Did he make a demand for half wages of you?

A. No.

Q. Have either of those men been discharged at this port and paid off?

60 A. Smith? I tell you I don't know Smith. Baldwin, he has not. Nobody has been discharged or paid off since the ship arrived. At least, I am wrong. There are three; three men I paid off in New York that I arranged verbally to pay off in Australia.

Q. You did make a verbal arrangement with three men to pay them off here?

A. Yes.

Q. But the other man didn't make this request?

A. No.

Q. It was perfectly easy to go ashore in Australia and get a man to come on board your ship and get him to sign on to be paid off anywhere you wanted to pay him off?

A. Yes.

Q. You could do that without any trouble? Take him off on a tug; and then, in accordance with British law, sign him on for a day or a month?

A. Isn't the man more or less a free agent in the matter? He was not told to come off to me; he volunteered to come off; he waited all day to come off to me, and as a matter of fact he wanted the position.

Q. You went to town——

A. He was notified that the vessel was sailing, and he was told two men were wanted, and he was the man that offered his services. You can't compel men nowadays.

Q. You didn't know that the shipping master had already promised him to be paid off in New York before he waited for you, did you?

A. I did not.

Q. You wanted a man, that was what you wanted, and you were not going to quibble about whether he was paid off in New York or in England, were you, at that time?

A. At that particular time, if he asked me to pay him off in New York, I would have said yes.

61 Q. You would have said anything?

A. Well, I will agree that probably I would under those conditions with the ship hung up.

Q. Have you ever paid men off before and charged them \$25?

A. Never.

Q. You never have?

A. I never have.

Q. You thought this was a good time to begin?

A. I didn't think it was a good time to begin at all. I was trying to get men, I told you, that was all.

Q. Why did you refuse to take the substitute he offered to provide you with for nothing?

A. Who offered to provide?

Q. Lucas.

A. Simply because I couldn't do that and run a ship.

Q. You wanted to get \$25, didn't you?

A. I did not.

Q. Didn't he offer to produce you a man and give him to you for nothing to sign on in his place, and you said, "No, I will take \$25 and get my own man"? Isn't that what you said?

A. I did not.

Q. You deny that, do you?

A. I deny it.

Q. You likewise deny that both of these men came to you on the morning of Monday, the 10th, and made a demand upon you for half their wages?

A. I do.

Q. And you came to the Consul's office after that two days, and were informed of the law on the subject; and now you claim that you knew all about the law before? You claim that under oath, too?

A. I do.

Q. How many men have deserted this ship in the last 8 months?

Mr. Potter: I object to the question as immaterial and irrelevant.

Witness looks at Articles.

62 Witness: 15.

Q. Can you tell me, without figuring very long, how much wages you have turned over to the Board of Trade for those men?

Mr. Potter: Objected to as irrelevant, immaterial and incompetent.

A. I suppose £30 or £40.

Q. I don't suppose you promised any of those men to pay them off before the Articles were up, did you, in order to get them to sign?

Mr. Potter: Objected to as immaterial, irrelevant and incompetent.

A. No.

Q. And you did not make any of the men whom you took in their places any such promise, did you?

Mr. Potter: Objected to as irrelevant, immaterial and incompetent.

Q. Except these three that you paid off?

A. That is quite right.

Q. You keep all your promises?

A. I do.

Q. Why didn't you note your promise in writing on the Articles of the vessel, as required by the British Shipping Laws, if you make such promises intending to keep them?

A. Well, I have a sense of honor; and these men took my word of honor; I have always been faithful to my honor, and I suppose that is why they accepted it.

Q. They knew all about you before they saw you, I suppose?

A. I suppose they took a better view of me than perhaps you have done.

63 Q. Perhaps a better view of you than these two men take?

A. That is right. I am saying——

Q. Or this last one you have had on the ship for 6 months suffering from a festered finger?

Mr. Potter: Objected to as incompetent, irrelevant and immaterial. I object to the entire line of examination.

A. That is quite right.

Q. You have made a correct account of these men's wages, I suppose?

A. I presume so.

Q. It shows a balance of £27.4.7 due Lucas, and £33.3.9 due Blixt?

A. That is right.

Q. These men have made a number of demands upon you for their clothes—upon the mate?

A. That is right.

Q. You refused to deliver their clothes to them?

A. I did.

Q. Do you still do so?

A. Well, I do so pending the present inquiry. If I am asked by you or compelled to give them their clothes I will. I am not going to give them their clothes until I am authorized by my advisers to do so.

Q. Captain, when these demands are made on you to be paid off you don't take them seriously, do you?

A. Well, I will tell you the position I am in. I have got a ship there with 75 of a crew, including myself. This ship is under 12 months' Articles, and we were out 7 or 8 months' time from New Zealand to New York on a two months' passage. You have only got to know sailors—this man Baldwin in particular—and the rest of them. I told him the other day in plain language. "I will give you them if you want clothes; I will give you money; and I have
64 given them; but I can't pay them off; I can't pay them off. I want to be paid off as much as you do."

Q. They are always asking to be paid off?

A. They are always asking to be paid off in every ship in the harbor.

Q. In all ships they are doing so?

A. Nine ships out of 10.

Q. You can't pay very much attention to the exact wording of their demands?

A. They come up and ask you to be paid off, and they want their discharge.

Q. Isn't it a safe proposition that when the men all have come to you and said, "Captain, we want half of our wages," you, thinking that they were just asking for their discharge as usual, told them to get out?

A. I would not put past that proposition. As they themselves put it, I said no, because I am right in saying no.

Q. You didn't know that these men had been to a lawyer's office and had been carefully advised as to just what to say to you?

A. I did not.

Q. You would guard yourself perhaps a little more carefully in your replies, if you have 20 or 30 coming along asking this thing. You will say no?

A. As I said to this man, "There is not a hope in the world."

Redirect:

Q. Captain, you said that two or three of the members of this crew you agreed to pay off in America?

A. That is right.

Q. When you arrived in America did they keep you to your promise?

A. Oh, yes.

Q. And did you pay them off?

A. I paid them off.

65 Q. They have been paid off?

A. They have been paid off. These men asked me the first day we were in about being paid off. I said, "All right. I have given you my word, and you will find that I will keep it. Just wait a few days until I can get settled with my general business, and I will make a point of paying you off." That was three—Larkin, Cox and a man named Lillias.

Q. Did these men, when making their request for discharge at New York, plead for their discharge? They didn't demand it as a matter of right, did they?

Mr. Axtell: Objected to because that question is rankly leading.

A. They did not demand, no; they asked.

Recross:

Q. These three men that you say you paid off, when and where were they signed on? Can't you tell without the Articles?

A. I will tell you. The one man was signed on by myself after leaving Wellington.

Q. Were they all signed on at the same place?

A. No. They are quite distinct. The others were signed on before a shipping master. There was only this man that came on at last and asked for a discharge in America. He wanted to go himself, and that was to get money. I said all right, I will take him, and I gave him a shilling—which is the usual thing for a man asking his discharge.

Q. Do you ever sign your men on before a shipping master or superintendent?

A. Always.

Q. I don't mean shipping master, I mean a consul.

A. Yes, before a consul.

66

Stipulation.

United States District Court, Eastern District of New York.

PETER LUCAS, Libellant,

against

S. S. "WESTMEATH."

It is hereby stipulated and agreed that the following opinions in adjudicated cases and laws of the Kingdom of Great Britain and Ireland may be introduced and considered as evidence in this case:

Section 221 of the Merchant's Shipping Act of 1894 provides as follows:

"If a seaman lawfully engaged, or an apprentice to the sea service, commits any of the following offences, he shall be liable to be punished summarily as follows:

(a) If he deserts from his ship he shall be guilty of the offence of desertion and be liable to forfeit all or any part of the effects he leaves on board, and of the wages which he has then earned, and also, if the desertion takes place abroad, of the wages he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship to any substitute engaged in his place at a higher rate of wages than the ship stipulated to be paid to him; and also, except in the United Kingdom, he shall be
67 liable to imprisonment for any period not exceeding twelve weeks with or without hard labour;

(b) If he neglects, or refuses without reasonable cause to join his ship, or to proceed to sea in his ship, or is absent without leave at any time within twenty-four hours of the ship's sailing from a port, either at the commencement or during the progress of a voyage, or is absent at any time without leave and without sufficient reason from his ship or from his duty, he shall, if the offence does not amount to desertion, or is not treated as such by the master, be guilty of the offence of absence without leave, and be liable to forfeit out of his wages a sum not exceeding two days' pay, and in addition for every twenty-four hours of absence, either a sum not exceeding six days' pay or any expenses properly incurred in hiring a substitute; and also, except in the United Kingdom, he shall be liable to imprisonment for any period not exceeding ten weeks with or without hard labour."

See also Merchant's Shipping Act of 1906, 6 Edw. 7, Chap. 48.

The Baltic Merchants, 1809, Edw. 86; The Pearl, 5 C. R., 224; The Blake, 1 W. Rob., 73; McLaoughlin's Law of Merchant Ship-
ping, page 249.

Stipulation.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAVE BLIST, Libelants,
against

S. S. "WESTMEATH."

It is hereby stipulated between the respective parties hereto that a copy of the shipping articles certified by the British Consul or Vice-Consul at New York May be substituted for the original articles and marked in evidence herein as claimant's Exhibit 4.

SILAS B. AXTELL,

Proctor for Libellants.

KIRLIN, WOOLSEY & HICKOX,

Proctors for Claimant.

CLAIMANT'S EXHIBIT 1.

April 21, 1916. E. H. C. Sten, N. P.

United States District Court, Eastern District of New York.

PETER LUCAS, Libelant,
against

STEAMSHIP "WESTMEATH," Her Tackle, Apparel, etc., and Owners.

To the Master, Owners, Agents and all others interested in the Steamship "Westmeath:"

Please take notice that a libel is now being filed by the above named libelant in behalf of himself and one other seaman from the Steamship "Westmeath" for services performed in the capacities of firemen, for which they claim wages in the sum total of approximately Two hundred and nin-ty (\$290.00) Dollars; that this action is being taken under Section 4530 of the United States Revised Statutes, Act of Congress of March 4th, 1915.

You will please take further notice that within twenty-four hours after service of this notice upon you, application will be made to the Clerk of the above Court to issue to the United States Marshal of the Eastern District of New York, a monition to attach said vessel and hold her as security for said claim and for such other claims as may subsequently be filed.

G. BLIXT—PETER LUCAS,

By his Proctor, SILAS B. AXTELL,

*Office & Post Office Address: One Broadway,
Borough of Manhattan, City of New York.*

70

CLAIMANT'S EXHIBIT 2.

April 21, 1916.

No. 4.

(Cut.)

E. H. C. Sten, N. P.

F. 1. Account of Wages.

(Sec. 132, M. S. A. 1894.)

Issued by the Board of Trade.

Name of Ship and Official No.: Westmeath 117,381.

Name of Seaman: P. Lucas.

Reference No. in Agreement: 114.

Date wages began: 19/12/15.

Date Wages ceased: 14/4/16.

Total Period of Employment: Months, 3, Days, 27.

Earnings.

3 Months at £10.0.0 per month.....	30 0 0
27 Days at 6/8 per day.....	9 0 0
Increase of wages, on promotion by £— per month for — months — days.	
Overtime —	
Extras —	
Total earnings	39 0 0

Deductions Excluding Allotments.

Date.	Particulars.	Amount.
	Reduction of wages, on disrating by £ — per month for — months — days.....	
	Half Engagement or Discharge Fee Aboard...	
	Advance on joining	
71	Fines	
	Other Cash Advances, Stores, &c., supplied (in order of date)	
	Cash Advanced N. Y. Ports.....	3 0 0
	Cash American Ports	7 14 2
	Tobacco	15 9
	Slops	5 6
	Deduction for Health Insurance, Contributions for — weeks, Cash on leaving Ship —	
	Total deductions, exclusive of Allotments	11 15 5
	Total earnings (as above)	39 0 0
	Total deductions, exclusive of Allotment (as above)	11 15 5
	Balance without deducting Allotments.....	27 4 7
	Allotments	
	Final Balance	£27 4 7

The above Account of Earnings and of Deductions, exclusive of Allotments is correct.

Signature of Master, ———.

Signature of Seaman, ———.

Port —.

Date —.

Money Orders.

Seamen who have friends or relatives residing at a Port in the United Kingdom can send to them any portion of their earnings by means of the Seamen's Money Orders, which may be obtained, free of expense, at any of the Mercantile Marine (Shipping) Offices.

Savings Bank.

Seamen are recommended, when they are "paid off" from their Ships, to take from the pay table a sum of money sufficient only for their immediate expenses, and deposit for safety the remainder of their wages in the Seamen's Savings Bank. They can then withdraw, free of expense, the whole amount of their Deposits at any Port they please, or they can withdraw portions of their money, first at one Port and then at another.

Interest at the rate of 5d. per month is allowed for every £10 deposited.

Full information may be obtained on application to the Superintendent. Mercantile Marine Office, at any Port in the United Kingdom.

73

CLAIMANT'S EXHIBIT 3.

April 21, 1916.

No. 5.

(Cut.)

E. H. C., Sten. N. P.

F. 1.

Account of Wages.

(Sec. 132, M. S. A., 1894.)

Issued by the Board of Trade.

Name of Ship and Official No.

Westmeath, 117,381.

Name of Seaman: G. Blixt.

Reference No. in Agreement: 109.

Date Wages began: 8/12/15.

Date Wages ceased: 14/4/16.

Total Period of Employment: Months, 4; Days, 7.

Earnings.

4 Months at £10. 0. 0 per month	40 0 0
7 Days at 6/8 per day	2 6 8
Increase of wages, on promotion by £— per month for — months — days.	
Overtime	
Extras	
Total Earnings	<u>42 6 8</u>

Deductions Excluding Allotments.

Date.	Particulars.	Amount.
	Reduction of wages, on disrating by £— per month for — months — days	
	Half Engagement or Discharge fee Aboard	
74		
	Fines —.	
	Advance on joining —.	
	Other Cash Advances, Stores, &c., supplied (in order of date)	
	Cash Advanced N. Y.	2 6 6
	Cash American Ports	5 4 2
	Tobacco	14 9
	Slops	17 6
	Deduction for Health Insurance, Contributions for — weeks.	
	Cash on leaving Ship —.	
	Total Deductions, exclusive of Allotments	9 2 11
	Total Earnings (as above)	42 6 8
	Total Deductions, exclusive of Allotments (as above)	<u>9 2 11</u>
	Balance without deducting Allotments	33 3 9
	Allotments —.	
	Final Balance	<u>£33 3 9</u>

The above Account of Earnings and of Deductions, exclusive of Allotments is correct.

Signature of Master, — — —.

Signature of Seaman, — — —.

Port New York.

Date 14/4/16.

Money Orders.

Seamen who have friends or relatives residing at a Port in the United Kingdom can send to them any portion of their earnings by means of the Seamen's Money Orders, which may be obtained, free of expense, at any of the Mercantile Marine (Shipping) Offices.

Savings Bank.

Seamen are recommended, when they are "paid off" from their Ships, to take from the pay table a sum of money sufficient only for their immediate expenses, and deposit for safety the remainder of their wages in the Seamen's Savings Bank. They can then withdraw, free of expense, the whole amount of their Deposits at any Port they please, or they can withdraw portions of their money, first at one Port and then at another.

Interest at the rate of 5d. per month is allowed for every £10 deposited.

Full information may be obtained on application to the Superintendent. Mercantile Marine Office, at any Port in the United Kingdom.

76

Opinion.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT

vs.

S. S. "WESTMEATH."

August 1, 1917.

Silas B. Axtell, Proctor for Libellants.

Kirlin, Woolsey & Hickox, Proctors for Claimant.

CHATFIELD, J.:

This case has to do with a claim for wages upon the British steamer Westmeath, arriving at the port of New York on April 3 and leaving on April 20.

The libellants are both British subjects, who were obtained in Australia, after the vessel had started to sail and after the firemen had refused to work because they were two men short in the fireroom. The captain agreed to take these men as seamen to the United States, and evidently promised to discharge them in New York upon obtaining substitutes at that port. No mention of this agreement was made in the articles, which were signed in the usual way. At New York both men asked the captain to pay them and sign them off, upon the strength of the oral agreement, and both offered to provide a substi-

77 tute. The captain repudiated the agreement, according to the statements of the libellants. They then went ashore, learned of the provisions of the La Follette Act, went back on board, demanded one-half their wages which was refused, whereupon they left the vessel and were marked off as deserters.

The British Consul had filed a memorandum in the case and objection was immediately raised that the men are governed by British Law as to the entire situation, and that further the La Follette Act does not apply to the situation presented by their demand for one-half wages.

In the case of *Horsford v. Orland* decided in the District of New Jersey it was held that the law of March 4, 1915, applied to American citizens on a British ship but not to British subjects on the same ship.

It would appear that the provisions of the law apply to the vessel and that the U. S. Court has the right to enforce the law. The treaty may or may not have been intended to reserve all rights as to British subjects which were the subject of British Statutes. But Congress has now passed a law which gives a U. S. Statute an effect over British subjects which is not covered by the British law and which must have been intended to supersede the rules governing British vessels under former statutes. The law is to aid American seamen. But they would not be aided if discrimination against British subjects in American ports should result in the stranding of American sailors in foreign ports. The effect of the Act of Congress is a matter perhaps for further treaty but the statement of the law is plain.

78 The dispute as to the oral agreement to terminate the voyage at New York has been waived by the election to demand wages under the La Follette Law and can be left out of consideration.

The libellants may have a decree for full wages.

(Sgd.)

THOMAS I. CHATFIELD,

U. S. D. J.

79 *Final Decree.*

At a Stated Term of the United States District Court held in and for the Eastern District at the Post Office Building in the Borough of Brooklyn, City of New York, on the 19th day of September, 1917.

Present, Hon. Thomas I. Chatfield, District Judge.

PETER LUCAS and GUSTAV BLIXT, Libellants,

against

S. S. "WESTMEATH," Her Tackle, Apparel, etc.

This cause having been heard on the pleadings and proofs, and having been argued and submitted by the proctors for the respective

parties and due deliberation having been had and the court having found that the libelants were entitled to receive their full wages, it is now

Ordered, adjudged and decreed by the court that the libelant, Peter Lucas, recover against the S. S. Westmeath, the sum of \$128.89 in wages, and that the libelant Gustav Blixt, recover against the S. S. Westmeath the sum of \$157.24 in wages with costs and disbursements for both libelants taxed at the sum of \$51.90, making in all the sum total of \$338.03 and that the said S. S. Westmeath be condemned to pay the same, and it is

Further ordered that unless an appeal be taken from this decree within ten days, the time limited by the rules and practice of this court, the stipulators for costs and value on the part of the claimant of said S. S. Westmeath, do cause the engagement of their stipulations to be performed or show cause within four days after the expiration after said time to appeal or on the first day after jurisdiction thereafter why process shall not issue against their goods, chattels and lands for the amount of their said stipulations.

THOMAS I. CHATFIELD,
U. S. D. J.

81 *Notice of Appeal,*

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

S. S. "WESTMEATH," Her Tackle, Apparel, etc.

SIR:

Please take notice that J. M. Thompson, claimant of the S. S. Westmeath, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered in the above entitled action on or about the 19th day of September, 1917, in the office of the Clerk of this Court, and from each and every part of said decree, as well as from the whole thereof.

Dated, New York, January 17, 1918.

Yours, etc.,

KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant.

Office and P. O. Address, 27 William Street, Borough of Manhattan, City of New York.

To Percy G. B. Gilkes, Esq., Clerk, and Silas B. Axtell, Esq., Proctor for Libelants, 1 Broadway, New York City.

82

Assignment of Errors.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

S. S. "WESTMEATH," Her Tackle, Apparel, etc.

The claimant assigns error to the final decision and decree of the District Court in the following respects:

First. The court failed to find that the libelants were deserters.

Second. The court failed to find that the libelants or any of them had deserted before making the alleged demand for one-half wages and had forfeited their wages.

Third. The court failed to find that the libelants had not made any demand for wages in accordance with the terms of the Statute.

Fourth. The court failed to find that as the matters set forth in the libel related to the internal management of a British steamship, the settlement of these matters should have been left to the British Consul at the port of New York in accordance with international comity.

Fifth. The court held that §4530 of the United States Revised Statutes was applicable to this case.

83 Sixth. The court held that §4530 of the United States Revised Statutes did apply, and that said Statute was constitutional.

Seventh. The court failed to enter a decree in favor of the claimant.

Eighth. The court failed to dismiss the libel with costs to the claimant.

KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant.

To Silas B. Axtell, Esq., Proctor for Libelants.

84

Stipulation.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

STEAMSHIP "WESTMEATH."

It is hereby stipulated and agreed by and between proctors for the respective parties hereto, that Claimant's Exhibit 4 being certified copy of the articles of agreement, may be omitted from the printed

record on appeal herein, and that the original thereof may be used upon the argument of said appeal with the same force and effect as if they had been made a part of the printed record herein.

Dated, New York, March 13, 1918.

SILAS B. AXTELL,
Proctor for Libelants.
KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant.

85

Stipulation.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

S. S. "WESTMEATH," Her Tackle, Apparel, etc.

It is hereby stipulated and agreed, that the foregoing is a true copy of the transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated, March 16th, 1918.

KIRLIN, WOOLSEY & HICKOX,
Proctors for Appellant.
SILAS B. AXTELL,
Proctor for Appellees.

86

Clerk's Certificate.

United States District Court, Eastern District of New York.

PETER LUCAS and GUSTAV BLIXT, Libelants,
against

S. S. "WESTMEATH," Her Tackle, Apparel, etc.

I, Percy G. B. Gilkes, Clerk of the District Court of the United States of America for the Eastern District of New York, do hereby Certify that the foregoing is a correct copy of the transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Eastern District of New York, this 16th day of March, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the said United States the one hundred and forty second.

PERCY G. B. GILKES,
Clerk.

87

Opinion.

United States Circuit Court of Appeals for the Second Circuit,
October Term, 1918.

No. 25.

PETER LUCAS and GUSTAV BLIXT, Libellants-Appellees,
v.

STEAMSHIP "WESTMEATH," Her Engines, etc., J. M. THOMPSON,
Claimant-Appellant.

Argued March 17, 1919. Decided April 16, 1919.

Appeal from the District Court of the United States for the Eastern
District of New York.

Before Ward, Hough and Manton, Circuit Judges.

Appeal from Decree in Admiralty Entered in the District Court for
the Eastern District of New York.

L. de Grove Potter, for Claimant-Appellant.
Silas B. Axtell, for Libellants-Appellees.

HOUGH, C. J.:

The legal ground-work of this action is identical with that of the
Italian (Opinion filed herewith).

88 At a port in Australia and in December, 1915, Libellants
shipped as members of the crew of the British Steamer West-
meath for a voyage "not to exceed one year." Before that year ex-
pired the Westmeath arrived in the harbor of New York, where she
loaded and discharged, and there the libellants aver they made de-
mand for half wages under R. S. 4530 as amended. This demand
was refused, whereupon this action was brought for full wages, &c.

The libellants had decree below, and as to the facts it is sufficient
to say that the single defense (of desertion) set up in the answer is
not proved. On the contrary we agree with the District Judge that
Libellants' case was proved within the statute.

To grant this decree in favor of foreign seamen against a foreign
vessel solely because such vessel by coming into the harbor of New
York and there unloading and discharging gave to her crew rights
entirely contravening those secured or granted to that crew by British
law,—is now asserted to be such an interpretation of the Seaman's
Act of March 4, 1915 as to render R. S. 4530 as amended unconsti-
tutional.

That the statute impairs, or rather abrogates the foreign seaman's
shipping contract is admitted; but we know of no reason why Con-
gress if so minded may not pass such a statute. "It is no answer (to
a plain congressional declaration) to say that it interferes with the
validity of contracts, for no provision of the constitution prohibits

Congress from doing this, as it does the states" (Mitchell vs. Clark, 110 U. S., at 643).

89 It is, however, urged that any interpretation of the act which enables a seaman on a foreign ship to accomplish that which is embodied in the decree appealed from,—is violative of the fifth amendment in that it interferes "with the liberty to contract on such terms as may be advisable to the parties to the contract," and is therefore "a deprivation of liberty without due process of law";—and for this reliance is placed upon *Allgeyer vs. Louisiana*, 165 U. S., 578.

In our opinion this very contention was in substance made in *Patterson vs. The Eudora*, 190 U. S., 169, and there disposed of; and this decision was recently approved in *The Talus* (S. C. U. S., Dec. 23, 1918).

The employment and discharge, treatment, status and punishment of merchant seamen has long been a part of the regulation of water-borne commerce. With the advisability or expediency of declaring all seamen, irrespective of nationality, to have a status, or be entitled to treatment when within a harbor of the United States totally differing from the treatment or status accorded them in every other part of the world,—we have no concern;—but entertain no doubt of the power of Congress to enact this statute as a commercial regulation.

Decree affirmed with costs.

90

Order for Mandate.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court Rooms in the Post Office Building in the City of New York, on the 26th day of April, one thousand nine hundred and nineteen.

Present:

Hon. Henry G. Ward,
Hon. Charles M. Hough,
Hon. Martin T. Manton,
Circuit Judges.

PETER LUCAS and GUSTAV BLIXT, Libellants-Appellees,

v.

STEAMSHIP WESTMEATH, Her Engines, etc., J. M. THOMPSON,
Claimant-Appellant.

Appeal from the District Court of the United States for the Eastern District of New York.

91 This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with interest and costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. G. W.
M. T. M.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. Peter Lucas & ano. v. S. S. "Westmeath"—Order for Mandate—United States Circuit Court of Appeals, Second Circuit. Filed April 28, 1919.—William Parkin, Clerk.

92

Clerk's Certificate.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 91 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Peter Lucas and Gustav Blixt, against S. S. Westmeath, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 26th day of May in the year of our Lord One Thousand Nine Hundred and Nineteen and of the Independence of the said United States the One Hundred and forty-third.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk.

93 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which The Steamship "Westmeath," her engines, etc., J. M. Thompson, claimant, is appelland, and Peter Lucas and Gustav Blixt are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Eastern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals

94 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the

United States, the seventeenth day of June, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

95 [Endorsed:] File No. 27,145. Supreme Court of the United States, No. 1059, October Term, 1918. J. M. Thompson, Master, etc., vs. Peter Lucas and Gustav Blixt. Writ of Certiorari. Filed Jun- 26, 1919, William Parkin, Clerk, United States Circuit Court of Appeals, Second Circuit.

96 United States Circuit Court of Appeals for the Second Circuit.

PETER LUCAS and GUSTAV BLIXT, Libellants-Appellees,
against
STEAMSHIP WESTMEATH, Her Engines, etc., J. M. THOMPSON,
Claimant-Appellant.

Stipulation to Return to the Writ.

It is hereby consented that the certified transcript of record in the above suit now on file in the office of the Clerk of the Supreme Court of the United States be taken as a return to the writ of certiorari herein dated June 17, 1919.

Dated, June 24th, 1919.

SILAS B. AXTELL,
Proctors for Libellants and Appellees.
KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant and Appellant.

97 To the Honorable the Supreme Court of the United States,
Greeting:

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereunto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, July 1st, 1919.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
*Clerk of the United States Circuit Court
of Appeals for the Second Circuit.*

98 & 99 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Peter Lucas vs. S. S. "Westmeath." Return to Certiorari.

100 [Endorsed:] File No. 27,145. Supreme Court U. S. October Term, 1919. Term No. 391. J. M. Thompson, Master, etc., Petitioner, vs. Peter Lucas and Gustav Blixt. Writ of certiorari and return. Filed July 5, 1919.